

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)	
APPLICATION FOR APPROVAL TO AMEND)	CASE NO.
EVIDENCES OF INDEBTEDNESS)	2000-486

O R D E R

On November 28, 2000, the Commission approved amendments as filed to two financing agreements previously approved for Big Rivers Electric Corporation ("Big Rivers"). The amendments were to the Restated Mortgage and Security Agreement dated July 15, 1998 ("1998 Mortgage"), as amended by the Supplemental Mortal Mortgage and Security Agreement dated April 1, 2000, and the Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement dated April 1, 2000 ("Nondisturbance Agreement"). The approved amendments were the result of efforts by Big Rivers to reduce its annual financing costs by \$220,500 through a "Fee Reduction Event" as provided for in the Standby Bond Purchase Agreements ("Standby Agreements"), which were the subject of Case No. 2000-343.¹ The November 28, 2000 Order approved the amendments as filed with and described in Big Rivers' November 1, 2000 application in this case. In addition, that Order required Big Rivers to file for Commission review of any modifications to the documents.

¹ Case No. 2000-343, Big Rivers Electric Corporation's Application for Approval of Amendments to Standby Bond Purchase Agreements, final Order dated August 25, 2000.

On November 30, 2000, Big Rivers filed a motion to amend its November 1, 2000 application to include copies of the proposed forms of notes which are referred to in the amendments to the 1998 Mortgage and the Nondisturbance Agreement. As described in the November 1, 2000 application and the November 30, 2000 motion to amend, notes will be issued to Credit Suisse First Boston (“Credit Suisse”) to evidence Big Rivers’ obligation to make certain payments associated with two pollution control bond series.² Credit Suisse’s ability to demand payment of these notes is limited to the performance of Ambac Assurance Corporation (“Ambac”) of its obligations under the applicable municipal bond insurance policy or surety policy issued by Ambac with respect to the pollution control bonds. Ambac has issued two municipal bond insurance policies guaranteeing the payment of principle and interest when due on the 1983 Series Bonds and the 1985 Series Bonds. Ambac has also issued three surety policies insuring the payment by Big Rivers of certain fees under the Standby Agreements. Big Rivers’ motion to amend clarified that Ambac issued three surety policies, not two as stated in the November 1, 2000 application.

On December 19, 2000, Big Rivers filed a second motion to amend its November 1, 2000 application to include the final versions of the financing documents. The revised documents, dated as of December 15, 2000, are as follows:

- 1) The Second Restated Mortgage and Security Agreement (“2000 Mortgage”);

² The pollution control bond series are identified as the \$58.8 million Pollution Control Floating Rate Demand Bonds, Series 1983 (“1983 Series Bonds”) and the \$83.3 million Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (“1985 Series Bonds”).

- 2) The Second Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement (“2000 Nondisturbance Agreement”);
- 3) Minor revisions to the notes to be issued to Credit Suisse that Big Rivers originally filed with its November 30, 2000 motion to amend; and
- 4) An Indemnification Agreement between Big Rivers and the parties to the 2000 Mortgage and 2000 Nondisturbance Agreement.

The 2000 Mortgage and 2000 Nondisturbance Agreement reflect the changes necessary for Big Rivers to achieve a “Fee Reduction Event” as provided for in the Standby Agreements. These changes also clarify the determination of the amounts that Big Rivers may owe to Ambac and Credit Suisse following a default, thereby eliminating any potential liability that Big Rivers might have to pay both Ambac and Credit Suisse for essentially the same obligation. Further, the changes clarify that the 2000 Mortgage secures the notes issued to Credit Suisse and not all amounts payable by Big Rivers under the Standby Agreements. Finally, certain obligations between Ambac and Credit Suisse are defined.³

The Indemnification Agreement provides that Big Rivers will indemnify the various parties from any costs or expenses arising out of the execution and delivery of the 2000 Mortgage and 2000 Nondisturbance Agreement. Big Rivers stated that the Indemnification Agreement did not expand its indemnification obligations, but reflected

³ See December 19, 2000 Motion to Amend at 2.

existing indemnification obligations contained in the existing Participation Agreement and Tax Indemnity Agreement.⁴

The Commission has reviewed the notes to be issued to Credit Suisse and compared their terms with the provisions contained in the 1998 Mortgage and Nondisturbance Agreement.⁵ The Commission finds that the Credit Suisse notes are consistent with the previously approved agreements, as well as the provisions contained in the 2000 Mortgage and 2000 Nondisturbance Agreement.

The Commission has also reviewed the revisions to the 1998 Mortgage and Nondisturbance Agreement as reflected in the 2000 Mortgage and 2000 Nondisturbance Agreement. The Commission believes that the changes contained in the 2000 Mortgage and 2000 Nondisturbance Agreement will allow Big Rivers to achieve a “Fee Reduction Event” as provided by the Standby Agreements. Further, having reviewed the provisions of the new Indemnification Agreement, the Commission concurs with the conclusion that the Indemnification Agreement does not represent an expansion of Big Rivers’ existing indemnification obligations.

Based on the evidence of record and being otherwise advised, the Commission finds that the 2000 Mortgage, the 2000 Nondisturbance Agreement, the Credit Suisse notes, and the Indemnification Agreement, as filed, are reasonable and should be approved.

⁴ Id. at 3.

⁵ The Credit Suisse notes were referenced in the 1998 Mortgage and Nondisturbance Agreement. However, the amounts referenced for two of the notes in the 1998 Mortgage and Nondisturbance Agreement were slightly higher than the actual note amounts. The 2000 Mortgage and 2000 Nondisturbance Agreement references to the Credit Suisse notes match the actual note amounts.

IT IS THEREFORE ORDERED that:

1. The revised amendments to the 1998 Mortgage and Nondisturbance Agreement, reflected in the 2000 Mortgage and 2000 Nondisturbance Agreement, as filed with and described in the December 19, 2000 Motion to Amend, are approved.

2. The notes to be issued to Credit Suisse, as filed with and described in the November 30, 2000 and December 19, 2000 Motions to Amend, are approved.

3. The Indemnification Agreement, as filed with and described in the December 19, 2000 Motion to Amend, is approved.

4. Big Rivers shall notify the Commission in writing within 7 days of its achievement of the "Fee Reduction Event."

Done at Frankfort, Kentucky, this 21st day of December, 2000.

By the Commission

ATTEST:


Executive Director